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FILED
YOLO SUPERIOR COURT

OCT 02 2009
By [Signature]
Deputy

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF YOLO

10 THE PEOPLE OF THE STATE
11 OF CALIFORNIA,

12 Plaintiff,

13 v.

14 MARCO ANTONIO TOPETE,

15 Defendant.

No. 08-3355

PEOPLE'S RESPONSE TO
DEFENDANT'S NOTICED MOTION
TO ENFORCE PRIOR ORDERS
AND LOCAL RULES OF COURT

Date: 11/6/09
Time: 8:30
Dept: 9

17 TO THE HONORABLE JUDGE PAUL K. RICHARDSON, THE DEFENDANT
18 MARCO ANTONIO TOPETE, AND HIS ATTORNEYS OF RECORD, HAYES H. GABLE III
19 AND THOMAS A. PURTELL.

20 The People Hereby respond to the defendant's motion. In short, we do not object to the
21 court enforcing local court rules, we will submit the issue of civilian clothing to the court, we
22 object to the court allowing the defendant to be unrestrained in pre-trial proceedings and will ask
23 for an evidentiary hearing on that issue.

24
25 **STATEMENT OF THE CASE**

26 Judge Rosenberg issued an order that the defendant be unrestrained until further order of
27 the court. A copy is attached to the defendant's motion. October 10th, 2008, Judge Fall modified
28

1 that specific order on the record after security concerns relating to Mr. Topete had been brought
2 to his attention [See Attachment A]

3 **PEOPLE'S RESPONSE TO DEFENDANT'S MOTION**
4

5 The People are unaware of any local rule of court that is not being enforced in this
6 proceeding, and have no objection to the enforcement of the local rules being referenced in the
7 defendant's motion.

8 The People have no objection to the defendant wearing civilian clothing.

9 The People do object to the defendant being unrestrained at this stage of the proceedings,
10 with no jury present. It is our position that Mr. Topete is not prejudiced by the restraints currently
11 being used, and that the court can and should revisit this issue when a jury is present in the court.
12 The defendant is being housed in the Sacramento County Jail and is under extreme restraints, as
13 a Total Separation Inmate, due to his alleged violent crime against Deputy Diaz, and his gang
14 classification. He is housed by himself, let out of his cell in very limited circumstances, and
15 anytime he is around others he is in belly chains/shackles or handcuffs and is under officer escort.

16 To allow him to be unrestrained in court is counterintuitive, especially when a jury is not
17 present. The seminal case on this point, People v. Duran (1976) 16 Cal.3d 282, does not prohibit
18 there being some restraints on the defendant in pre-jury proceedings.

19 If the court is considering having him be unrestrained, the People will ask the court to
20 conduct an evidentiary hearing prior to making that decision final, even in the absence of recent problems with
21 the defendant.
22

23 DATED: October 2, 2009

24 Respectfully submitted,

25 JEFF W. REISIG
26 DISTRICT ATTORNEY

27
28 BY: 

GARRETT HAMILTON
Supervising Deputy District Attorney

Attachment A

FILED
SUPERIOR COURT OF CALIFORNIA, YOLO COUNTY
SUPERIOR COURTS

COUNTY OF YOLO

OCT 10 2008

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TIMOTHY L. FALL, Judge

By _____
Department Deputy

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

VS.)

MARCO. ANTONIO TOPETE,)

Defendant.)

COPY

No. 08-3355

REPORTER'S TRANSCRIPT OF DAILY PROCEEDINGS

Pages 113 - 119

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OCTOBER 10, 2008

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APPEARANCES

FOR THE PEOPLE:

JEFF W. REISIG
District Attorney &
GARRETT HAMILTON
Deputy District Attorney
301 Second Street
Woodland, CA 95695

FOR THE DEFENDANT:

HAYES H. GABLE, III
Attorney at Law
428 J Street
Sacramento, CA 95814

THOMAS A. PURTELL
Attorney at Law
430 Third Street
Woodland, CA 95695

REPORTED BY:

KELI RUTHERDALE, C.S.R. #10084

1 OCTOBER 10, 2008 09:01 AM

2 --oOo--

3 The above-entitled matter came on this day for
4 Status Conference before the Honorable TIMOTHY L. FALL,
5 Judge of the Superior Court.

6 The People were represented by JEFF W. REISIG,
7 District Attorney & GARRETT HAMILTON, Deputy District
8 Attorney of Yolo County.

9 The Defendant, MARCO ANTONIO TOPETE, was present
10 represented by HAYES H. GABLE, III & THOMAS A. PURTELL,
11 Attorneys at Law.

12 KELI RUTHERDALE, C.S.R., Official Court Reporter,
13 was present and acting.

14 The following proceedings were had:

15 P R O C E E D I N G S

16 --oOo--

17 THE BAILIFF: Remain seated and come to order.
18 Superior Court, Department 9 is now in session. The
19 Honorable Timothy Fall, judge, presiding.

20 THE COURT: Good morning. We are here on People
21 versus Topete.

22 Can I have appearances, please?

23 I will start over here on my right, if you would.

24 MR. REISIG: Jeff Reisig for the People.

25 MR. HAMILTON: Garrett Hamilton for the People.

26 MR. GABLE: Good morning, your Honor. Hayes Gable
27 and Tom Purtell on behalf of Mr. Topete.

28 THE COURT: Mr. Topete is here with us as well.

1 Counsel, I realize there had been an order earlier,
2 and I think I either told all of you, or I mentioned it to
3 the presiding judge when the assignment order was being
4 made, that all orders that have been made so far I am going
5 to be enforcing and applying. I am not bothering to change
6 anything just to fit my own preferences.

7 But if I or any of you see a reason to change those
8 orders, then we will bring it up and talk about it in a
9 hearing.

10 One matter that seems a bit different this morning,
11 though, is that Mr. Topete is wearing handcuffs.

12 And I did want to let you know that I had received
13 some information from the Sheriff's office on a security
14 issue about Mr. Topete's confinement at the jail. And
15 apparently there was some contraband found, and it led to a
16 security concern.

17 The reports, I suppose if you wanted to see them,
18 you would make the request through the proper channels to
19 get a copy of whatever the jail reports are for further
20 information on it.

21 They gave me a little more information than I put on
22 the record here, and if you have any questions, I will tell
23 you what little I know, but if you want to just wait to
24 read the reports yourselves, you can do that as well.

25 Mr. Gable?

26 MR. GABLE: That would be my preference to review
27 the reports.

28 THE COURT: Mr. Reisig?

1 MR. REISIG: Ours as well.

2 THE COURT: Okay. So where are we headed next? How
3 much discovery have you been able to engage in? How is the
4 investigation going? How much more time do you think to be
5 ready for a trial setting conference?

6 MR. GABLE: I would request -- I haven't had a
7 chance to speak with Mr. Reisig about this, but I would
8 request that this matter go over approximately three months
9 for trial setting.

10 We have just begun our investigation. We had some
11 trouble with 987.9, getting set up with that, and so we are
12 just assembling, at this point in time, our defense team.

13 So we are a little bit behind the curve, but I think
14 by January we will have a good idea where we are going.

15 MR. PURTELL: The 987 judge was on vacation, out of
16 the country or someplace.

17 THE COURT: So the assignment was made, and then the
18 person wasn't around?

19 MR. PURTELL: Exactly.

20 THE COURT: But it is back on track now?

21 MR. GABLE: We are finally on track.

22 THE COURT: Mr. Reisig, what about you for timing
23 and getting the case moving?

24 MR. REISIG: A couple of things. First of all, we
25 have provided, I would say, ninety-nine percent of the
26 discovery to the defense at this point.

27 Our investigation should be completely wrapped up,
28 at least at this stage, within a month, so three months to

PROOF OF SERVICE

I, RACHEL HUNTER, declare:

I am a citizen of the United States and a resident of the County of Yolo; I am over the age of eighteen years and not a party to the within entitled action; my business address is 301 Second Street, Woodland, California 95695.

On October 2, 2009, I served the within document: **PEOPLE'S RESPONSE TO DEFENDANT'S NOTICED MOTION TO ENFORCE PRIOR ORDERS AND LOCAL RULES OF COURT**

- ☐ by placing a true copy thereof in the box located at 301 Second Street, Woodland and clearly designated for daily pick-up by:
- ☐ by transmitting via facsimile the document listed above on this date before 5:00 pm. to fax number:
- ☐ by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Woodland, California, addressed as follows:
- ☒ (XX) by placing a true copy of the above document in a sealed envelope and deposited the same at the Yolo County Mail Room for posting this business day, in the United States mail at Woodland, California, addressed as follows:

Hayes Gable III
Attorney at Law
428 J St, Ste 354
Sacramento, CA 95814

Thomas Purtell
Attorney at Law
430 3rd St
Woodland, CA 95695

I declare under penalty of perjury that the foregoing is true and correct.
Executed on October 2, 2009 at Woodland, California.


RACHEL HUNTER